

Office of the City Manager
306 Cedar Road
Chesapeake, Virginia 23322
Office: (757) 382-6166
Fax (757) 382-6507
TDD: (757) 382-8214

September 17, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

*RE: Accelerating Wireline Broadband Deployment by Removing Barriers to
Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband
Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79*

Dear Ms. Dortch,

The City of Chesapeake writes to express its concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. The City understands that small cell technology has the potential to bolster economic potential and provide opportunities for our community. To that end, Chesapeake has progressively responded to the emergence of small cell technology by amending its Zoning Ordinance to permit administrative review before the Virginia Code required such action, forming and participating in broadband committees and working with telecommunications providers to explore other regulatory methods such as franchises.

While we appreciate the Commission's efforts to engage with local governments on this issue and share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments have an important responsibility to protect the health, safety, and welfare of residents, and we are concerned that these preemption measures compromise that traditional authority and expose wireless infrastructure providers to unnecessary liability.

Broadband deployment can and should be a collaborative process, not a preemptive one. According to CITA, a wireless industry trade association, the wireless industry expects to deploy as many as 300,000 small cell sites nationwide over the next several years. This is approximately the same number of cell tower sites installed, industry-wide, during the past thirty-five years. Thus, not only will localities be inundated with an unprecedented number of applications, but they will be handicapped with infeasible deadlines and impractical fee structures, and in some instances, removed from any meaningful siting input all-together. A locality should not be forced to cede so much authority over publicly-owned land to private

industry, especially where wireless service providers are not public utilities under Va. Code Ann. § 56.265.1, and not subject to the same regulation or oversight.

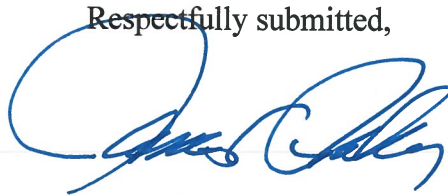
The following proposals in the declaratory ruling are extremely problematic:

- **The FCC's proposed new collocation shot clock category is too extreme.** The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an unreasonable burden on local governments to prevent historic preservation, environmental, or safety harms to the community. The addition of up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial and may necessitate more review than the FCC has allowed in its proposal. Chesapeake is additionally concerned that the 60 day requirement is not a reasonable amount of time as application of the regulatory construct is complex and administrative review requires input from multiple City departments.
- **The FCC's proposed definition of "effective prohibition" is overly broad.** The draft report and order proposes a definition of "effective prohibition" that invites challenges to long-standing local rights of way requirements unless they meet a subjective and unclear set of guidelines. While the Commission may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding. Localities are vested with the authority to regulate uses to mitigate the impacts that can occur. This overly broad provision is detrimental to this stated objective of zoning.
- **The FCC's proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation.** We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately \$270 per small cell site. Local governments share the federal government's goal of ensuring affordable broadband access for every American, regardless of their income level or address. That is why many cities have worked to negotiate fair deals with wireless providers, which may exceed that number or provide additional benefits to the community. Additionally, the Commission has moved away from rate regulation in recent years. Why does it see fit to so narrowly dictate the rates charged by municipalities?

Our City has worked with private business to build the best broadband infrastructure possible for our residents. As stated above, we have adopted a progressive approach and the City continues to work with the telecommunications community to find innovative ways to encourage this technology in our community. We oppose this effort to restrict local authority and stymie local innovation, while limiting the obligations providers have to our community. Chesapeake supports the expansion of broadband infrastructure and further collaboration on accomplishing

this goal. Notwithstanding our shared goal, the City respectfully asks that you maintain our locality's ability to adequately protect our citizens and do not subject the City to unreasonable restrictions regarding the handling of small cell applications. We urge you to oppose this declaratory ruling and report and order.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "James E. Baker", is written over a horizontal line.

James E. Baker
City Manager